



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2021-0099]

RIN 1625-AA09

Drawbridge Operation Regulation; Okeechobee Waterway, Indiantown, FL

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating schedule that governs the Seaboard System Railroad Bridge, across the Okeechobee Waterway, mile 28.2, at Indiantown, FL. This change will allow the swing bridge to be remotely operated, change the start and end times for advance notification for an opening during the overnight hours and update the name of the bridge.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>. Type USCG-2021-0099 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Omar Beceiro, U.S. Coast Guard Sector Miami Waterways Management Division, telephone 305-535-4317, email Omar.Beceiro@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
OMB	Office of Management and Budget
NPRM	Notice of proposed rulemaking (Advance, Supplemental)
§	Section
U.S.C.	United States Code
FL	Florida

II. Background Information and Regulatory History

On March 5, 2021, the Coast Guard published a Test Deviation, with a request for comments, entitled “Drawbridge Operation Regulation; Okeechobee Waterway, Indiantown, FL,” in the Federal Register (86 FR 12821), to test this operating schedule for the Seaboard System Railroad Bridge. Zero comments were received during the test period.

On April 12, 2021, the Coast Guard published a notice of proposed rulemaking entitled “Drawbridge Operation Regulation; Okeechobee Waterway, Indiantown, FL,” in the Federal Register (86 FR 18929). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this regulatory change. During the comment period that ended June 11, 2021, we received one comment which is addressed in Section IV of this final rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499. The Seaboard System Railroad Bridge across the Okeechobee Waterway, mile 28.2, at Indiantown, FL, is a swing bridge with a seven-foot vertical clearance at mean high water in the closed position. Navigation on the waterway is commercial and recreational. The operating schedule for the bridge is set forth in 33 CFR 117.317(e).

The rule allows the swing bridge to be remotely monitored and operated. The swing bridge will remain in the open to navigation position during daylight hours and close only for the passage of rail traffic. The start of the three hour advance notice for an

opening will begin earlier each evening and end one hour later each morning. The time changes for the three hour advance notice will align with the operating schedule of the U.S. Army Corps of Engineers (USACE) Locks along this portion of the Okeechobee Waterway. The changes allow for the swing bridge to operate more efficiently while taking into account the reasonable needs of navigation. Additionally, the name of the swing bridge would be updated to reflect the current bridge owner.

This change allows vessels that are capable of transiting under the bridge, without an opening, to do so at any time and vessels are able to transit the bridge when advanced notice is given. Vessels in distress and public vessels of the United States must be allowed to pass at any time.

IV. Discussion of Comments, Changes, and the Final Rule

The one comment received did not object to the rule change but provided suggestions in addition to the proposed rule change. The commenter felt the bridge should remain open until 6 p.m. before shifting to the three hour advanced notice for an opening. The rule allows the bridge to shift to the three hour advanced notice at 7 p.m. until 7 a.m. daily. The commenter would like signage to be placed at unspecified locations along the waterway approximately one mile before the bridge. Per the commenter, this would greatly reduce congestion in the narrow channel at the bridge when in the closed position. Contact information for the bridge is found in 33 CFR 117.317(e) and posted on the bridge per Federal drawbridge regulations. Additional posting requirements, not in accordance Federal drawbridge regulations, are outside the Coast Guard's authority. The Coast Guard provided the bridge owner, CSX Transportation, with this recommendation from the commenter for consideration.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these

statutes and Executive orders, and we discuss First Amendment rights of protesters.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the fact that vessels can still transit the bridge given advanced notice and vessels that can transit under the bridge without an opening may do so at anytime.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received zero comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V. A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule may affect your small business, organization, or governmental jurisdiction or you have questions concerning its provisions or options for compliance, please contact

the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges and is categorically excluded from further review, under paragraph L49, of Chapter 3, Table3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; and Department of Homeland Security Delegation No. 0170.1.

2. Amend §117.317 by revising paragraph (e) to read as follows:

§ 117.317 Okeechobee Waterway.

* * * * *

(e) *Seaboard System Railroad bridge, mile 28.2 at Indiantown.* The draw of the CSX Railroad Bridge, mile 28.2 at Indiantown, FL, shall operate as follows:

(1) The swing bridge is not tendered locally, but will be monitored and operated by a remote operator.

(2) Marine radio communication shall be maintained, by the remote operator, with mariners near the bridge for the safety of navigation. Visual monitoring of the waterway shall be maintained with the use of cameras. Detection sensors shall be installed for the detection of vessels entering the radius of the swing span of the bridge while in operation.

(3) From 7 a.m. to 7 p.m., the bridge will be maintained in the open to navigation position and will display green lights to indicate that the span is fully open.

(4) When a train approaches, the remote operator shall monitor for vessels in the vicinity of the bridge. Provided the sensors do not detect a vessel entering the swing radius of the bridge, the operator shall initiate the closing sequence, which includes the sounding of a horn. The span will remain in the closed position for the entire time the track circuit is occupied displaying red lights.

(5) After the train has cleared the track circuit, the span shall open and green lights will be displayed.

(6) From 7 p.m. to 7 a.m., the bridge will be in the closed to navigation position and will open if at least a three hour advance notice is requested via marine radio channel 9 VHF or telephone (813) 677-3974.

(7) The bridge shall not be operated from the remote location in the following events: failure or obstruction of the detection sensors, remote actuation systems, cameras, or marine radio communications, or when directed by the Coast Guard. In these situations, a bridge operator must be on-site and locally operate the bridge.

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Dated: July 7, 2021.

Eric C. Jones,
Rear Admiral, U. S. Coast Guard,
Commander Seventh Coast Guard District.

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